



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-259719

Date: June 27, 1995

DIGEST

Exclusive use charges apply to a Department of Defense dromedary shipment when a carrier provides exclusive use and the shipper requests exclusive use by preparing a Government Bill of Lading with an annotation substantially equivalent to the one available in Item 205 of the Military Traffic Management Commands Freight Traffic Rules Publication 1A (MFTRP 1A) for requesting exclusive use when shipper seals are applied. The Court of Appeals finding in Baggett Transp. Co. v. U.S., 969 F.2d 1028 (Fed. Cir. 1992) that the identical language in a plaintiff's tariff did not imply a request for exclusive use, does not apply because the MFTRP 1A was later modified to make such language a request for exclusive use.

DECISION

Tri-State Motor Transit Company, requests that we review the General Services Administration's settlement of Tri-State's primary and alternate claims under Government Bill of Lading (GBL) D-1,691,327. In its primary claim, Tri-State seeks an additional \$2,237.30 on the basis that its tenders to the Department of Defense (DOD), under which it initially billed, did not apply to shipments like this which benefited the Coast Guard. In its second claim, Tri-State seeks an additional \$614.90 for exclusive use service. We affirm the General Services Administration's (GSA) settlement of the primary claim, and in accordance with GSA's subsequent settlement, we allow Tri-State's further claim.

The GBL transaction involved the March 1991 dromedary shipment of 1,685 pounds of Class C Explosives (2 pallets of signal cartridges) from a contractor in Cordova, Tennessee to the Sierra Army Depot in Herlong, California. The GBL indicated that charges were to be billed to the Navy Material Transportation Office and that the shipment was for transshipment to Lualualei, Hawaii.

In its initial claim, Tri-State argues (and neither GSA nor the Military Traffic Management Command (MTMC) denies) that the real beneficiary of the shipment was the Coast Guard, which is not a part of DOD; therefore, DOD tenders did not apply. Both

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GSA and MTMC contend that the primary claim fails because elements of DOD were responsible for the shipment as the consignor, consignee and the paying office. MTMC also contends that the seal notation does not constitute a request for exclusive use.

This shipment was governed by MTMC's Freight Traffic Rules Publication 1A (MFTRP 1A), and these rules govern freight services of all motor carriers doing business with DOD. See Item 5, 2 of MFTRP 1A. We have held that the fact that a non-DOD agency benefits from the receipt of articles transported under DOD tenders does not prevent the application of carrier tenders offered to the DOD under MFTRP 1A. See Tri-State Motor Transit Company, B-256165, July 29, 1994. As in B-256165, DOD had extensive responsibilities with respect to this shipment, and there is a firm basis to apply MFTRP 1A and the associated individual carrier tender to this shipment.

In its second claim, Tri-State argues, and GSA now agrees, that the following annotation was a request for exclusive use service.¹

"DO NOT BREAK SEALS EXCEPT IN CASE OF EMERGENCY OR UPON PRIOR AUTHORITY OF THE CONSIGNOR OR CONSIGNEE. IF FOUND BROKEN OR IF BROKEN FOR EMERGENCY REASONS, APPLY CARRIER'S SEALS AS SOON AS POSSIBLE AND IMMEDIATELY NOTIFY BOTH THE CONSIGNOR AND THE CONSIGNEE."

We believe that GSA and Tri-State correctly characterize the effect of the seals notation quoted above. In Baggett Transp. Co. v. U.S., 969 F.2d 1028 (Fed. Cir. 1992), the Court found that a provision in a Coast Counties Express² tariff which was identical to the annotation quoted in the GBL involved here, did not provide a basis for an implied request for exclusive use. However, aspects of the contractual relationship between the industry and DOD have changed since the Baggett shipments.³

¹Exclusive use service means that the vehicle or dromedary furnished by the carrier will be devoted exclusively to the transportation of the shipment, without breaking the seals or locks and without the transfer of the lading for the carrier's convenience. A dromedary is a freight box carried on and securely fastened to the chassis of a truck tractor or flatbed trailer which, among other things, is equipped with doors that can be locked and sealed. See Tri-State Motor Transit Co., B-256083, n.1, June 10, 1994.

²Coast Counties Express, Inc. was a co-plaintiff with Baggett Transportation Company.

³See Tri-State Motor Transit Co., B-256083, supra. MFTRP 1A became effective after the Baggett shipments.

Item 205 of MFTRP 1A now provides that exclusive use is requested when the shipper annotates the GBL with the notation "EXCLUSIVE USE OF VEHICLE REQUESTED BY THE GOVERNMENT" or with an annotation, almost identical to the one in the GBL here in issue.⁴ In contrast, at the time of the Baggett shipments, DOD regulations for requesting exclusive use required different statements on the GBL in order for exclusive use to be requested.

It appears that the notation placed on this GBL is not substantially different from the second exclusive use annotation provided in Item 205. Thus, in our view, DOD requested exclusive use. We modify GSA's original settlement to reflect its subsequent allowance of exclusive use charges.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel

⁴The only significant difference between the second Item 205 annotation for exclusive use and the one in this GBL is at the beginning of the second sentence of the annotation: "IF FOUND BROKEN FOR EMERGENCY REASONS APPLY CARRIER SEALS AS SOON AS POSSIBLE . . ." (Item 205) versus "IF FOUND BROKEN OR IF BROKEN FOR EMERGENCY REASONS, APPLY CARRIER'S SEALS AS SOON AS POSSIBLE . . ." (GBL).